

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

ESTABLISHMENT INSPECTION OF:

CENTRAL PROCESSING CORP.
d/b/a **COUNTY MATERIALS CORP.**
1203 70th Avenue
Roberts, WI 54023

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MISC CASE NO. 14-mc-1

APPLICATION FOR INSPECTION WARRANT
UNDER THE OCCUPATIONAL SAFETY
AND HEALTH ACT OF 1970

To the Honorable United States Magistrate Judge:

Ruth Wright, a duly authorized Compliance Safety and Health Officer (“CSHO”) of the Occupational Safety and Health Administration (“OSHA”), United States Department of Labor, hereby applies for an inspection warrant, pursuant to Section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), hereinafter referred to as the “Act”, and the Regulations issued pursuant thereto, for the safety and health inspection and investigation of the place of business of CENTRAL PROCESSING CORP. d/b/a COUNTY MATERIALS CORP. at 1203 70th Avenue, Roberts, WI 54023 (hereinafter “CMC”).

The undersigned, being duly sworn, deposes and says:

1. The aforesaid worksite comprises the workplace of employees who are employed by an employer, believed to be engaged in a business affecting commerce, and is subject to the requirements of the Act.

2. On January 24, 2014, the OSHA Appleton Area Office received a referral from a State Agency, regarding an injury of a CMC employee at one of CMC’s facilities located at 1203 70th Avenue, Roberts, WI 54023 (“Worksite”). The State Agency indicated that a CMC employee’s

leg was crushed by a concrete form that had fallen on the employee at the Worksite. OSHA learned that the employee had his leg amputated just below the knee and was still in the hospital as of January 25, 2014.

4. I know from my training and experience that the existence of these conditions may be in violation of the Act, specifically the failure to provide employees with a workplace free of recognized hazards, as well as the regulations issued pursuant to the Act.

5. In accordance with OSHA Directive CPL 02-00-150-“Field Operations Manual,” Chapter 9 “Complaint and Referral Processing” (Exhibit A),¹ Area Director Mark Hysell determined that this referral, from a state governmental agency, is a non-formal complaint which meets the criteria for an on-site inspection of the Worksite as set forth at Chapter 9, paragraph C.3, as it “alleges that a permanently disabling injury...has occurred as a result of the complained of hazard(s), and there is reason to believe that the hazard or related hazards still exists.” Exhibit A, p. 9-4.

6. Randy Thompson, a Regional Manager and an official representative of CMC, had previously informed CSHO Wright that company policy does not permit warrantless inspections by OSHA. Therefore, the Area Director and the Regional Solicitor of the U.S. Department of Labor believe that the issuance of a pre-inspection warrant is necessary and appropriate and in accordance with 29 CFR 1903.4(b).

7. The inspection and investigation will be conducted by one or more compliance officers designated by the Secretary of Labor, United States Department of Labor, to be his

¹ Exhibit A, which became effective on April 22, 2011, is a federal OSHA instruction which establishes policies and procedures for handling complaints relating to workplace safety and health conditions. A complaint inspection is an on-site examination of an employer's worksite that is initiated primarily as a result of a complaint; is conducted by an OSHA compliance officer at the employer's worksite, and meets at least of the criteria identified in Section I.C. “Criteria Warranting an Inspection” of Exhibit A.

authorized representative(s), pursuant to proper and reasonable administrative standards contained in regulations duly issued by the Secretary under authorization granted in the Act and found in 29 CFR §1903.

8. The inspection and investigation will be conducted during regular working hours, within reasonable limits, and in a reasonable manner. The Compliance Officer(s) credentials will be presented to the employer, and the inspection and investigation will be commenced as soon as practicable after the issuance of this inspection warrant and will be completed with reasonable promptness, in accordance with Section 8(a) of the Act.

9. The requested safety inspection and investigation is limited to those areas and/or conditions specified in Paragraph 2 of this Application For Inspection Warrant, as well as to any hazardous work areas, procedures and/or working conditions where work is performed or permitted to be performed by employees of the employer within the plain view of the Compliance Officer(s) during the course of the inspection, and to all pertinent conditions, structures, machines, apparatus, devices, equipment, materials and all other things therein, including a review of records required by the Act and/or directly related to the purpose of the inspection (but not including medical records as defined in 29 CFR 1910.1020(c)(6)(i)), and related to the hazardous safety and/or health conditions referred to in Paragraph 2 of this Application For Inspection Warrant, and bearing on whether this employer is furnishing to its employees employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees, and whether this employer is complying with the occupational safety and health standards promulgated under the Act and the rules, regulations, and orders issued pursuant to the Act.

10. The compliance officer(s) are authorized by Section 8(a) (2) of the Act to inspect and investigate the place of employment and to question privately any employer, owner, operator, agent,

or employee of the establishment. By regulation at 29 CFR §1903.7 and OSHA Instructions CPL 02-00-150, Chapter 3, (OSHA Instructions attached hereto as Exhibit A, pp. 3-1 – 3-35), the compliance officer(s) are further authorized to take environmental samples, including samples taken by personal sampling devices attached to employees, and to take or obtain photographs and/or videotapes related to the purpose of the inspection.

11. The compliance officer(s) may be accompanied by a representative of the employer and a representative authorized by his employees, pursuant to Section 8(e) of the Act.

12. A return will be made to the Court at the completion of the inspection and investigation.

13. The authority for issuance of the inspection warrant is Section 8(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), and the regulations issued pursuant thereto in 29 CFR 1903.3 and 1903.4. *See Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978); *Matter of Establishment Inspection of Kelly-Springfield Tire Co.*, 13 F.3d 1160 (7th Cir. 1994); *Matter of Midwest Instruments*, 900 F.2d 1150 (7th Cir. 1990); *In re Cerro Copper Products Company*, 752 F.2d 280 (7th Cir. 1985); *Burkart Randall Div. of Textron, Inc. v. Marshall*, 625 F.2d 1313 (7th Cir. 1980); *Stoddard Lumber Co. Inc. v. Marshall*, 627 F.2d 984 (9th Cir. 1980); *Matter of Establishment Inspection of Gilbert & Bennett Mfg. Co.*, 589 F.2d 1335 (7th Cir. 1979) *cert. denied*, 444 U.S. 884 (1979).


Dated: _____

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RUTH WRIGHT
Compliance Safety and Health Officer
U.S. Department of Labor
Occupational Safety and Health
Administration

Sworn to before me and subscribed telephonically on this 30th day of JANUARY, 2014.



STEPHEN L. CROCKER
United States Magistrate Judge